

## Maritime Administration, DOT

## § 296.2

845133, Dallas, Texas 75284-5133, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

(b) [Reserved]

### Subpart E—Appeals Procedures

#### § 295.40 Administrative determinations.

(a) *Policy.* A Contractor who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal to the Maritime Administrator. Such appeals shall be made in writing to the Maritime Administrator, within 60 days following the date of the document notifying the Contractor of the administrative determination of the Contracting Officer. Such an appeal should be addressed to the Maritime Administrator, Att.: MSP Contract Appeals, Maritime Administration, 400 Seventh St., S.W. Washington, D.C. 20590.

(b) *Process.* The Maritime Administrator may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Maritime Administrator shall be final.

## PART 296—MARITIME SECURITY PROGRAM (MSP)

### Subpart A—Introduction

Sec.

- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Applications.
- 296.4 Waivers.

### Subpart B—Eligibility

- 296.10 Citizenship requirements of owners, charterers and operators.
- 296.11 Vessel requirements.
- 296.12 Applicants.

### Subpart C—Priority for Granting Applications

- 296.20 Tank vessels.
- 296.21 Participating Fleet Vessels.
- 296.22 Other vessels.
- 296.23 Discretion within priority.

- 296.24 Subsequent awards of MSP Operating Agreements.

### Subpart D—Maritime Security Program Operating Agreements

- 296.30 General conditions.
- 296.31 MSP assistance conditions.
- 296.32 Reporting requirements.

### Subpart E—Billing and Payment Procedures

- 296.40 Billing procedures.
- 296.41 Payment procedures.

### Subpart F—Appeals Procedures

- 296.50 Administrative determinations.

### Subpart G—Maintenance and Repair Reimbursement Pilot Program

- 296.60 Applications.

AUTHORITY: Pub. L. 108-136, Pub. L. 109-163; 49 U.S.C. 322(a), 49 CFR 1.66.

SOURCE: 70 FR 55588, Sept. 22, 2005, unless otherwise noted.

## Subpart A—Introduction

### § 296.1 Purpose.

This part prescribes regulations implementing the provisions of Subtitle C, Maritime Security Fleet Program, Title XXXV of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003), governing Maritime Security Program (MSP) payments for vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States allowed under a registry endorsement issued under 46 U.S.C. 12105. The MSA 2003 provides for joint responsibility between the Department of Defense (DOD) and the Department of Transportation (DOT) for administering the law. These regulations provide the framework for the coordination between DOD and DOT in implementing the MSA 2003. Implementation of the MSA 2003 has been delegated by the Secretary of Transportation to the Maritime Administrator, U.S. Maritime Administration and by the Secretary of Defense to the Commander, U.S. Transportation Command, respectively.

### § 296.2 Definitions.

For the purposes of this part:

*Act* means the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1101 *et seq.*).

*Administrator* means the Maritime Administrator, U.S. Maritime Administration (MARAD), U.S. DOT, who is authorized by the Secretary of Transportation to administer the MSA 2003, in consultation with the Commander, U.S. Transportation Command (USTRANSCOM).

*Agreement Vessel* means a vessel covered by an MSP Operating Agreement.

*Applicant* means an applicant for an MSP Operating Agreement. The term, “applicant” excludes a trust.

*Bulk Cargo* means cargo that is loaded and carried in bulk without mark or count.

*Chapter 121* means the vessel documentation provisions of chapter 121 of title 46, United States Code.

*Coastwise Trade* means trade between points in the United States.

*Commander* means Commander, USTRANSCOM, who is authorized by the Secretary of Defense to administer the MSA 2003, in consultation with the Administrator.

*Contracting Officer* means the Associate Administrator for National Security, MARAD.

*Contractor* means the owner or operator of a vessel that enters into an MSP Operating Agreement for the vessel with the Secretary of Transportation (acting through MARAD) pursuant to § 53103 of the MSA 2003. The term, “Contractor” excludes a trust.

*Defense Contractor* means a person that operates or manages United States documented vessels for the Secretary of Defense or charters vessels to the Secretary of Defense and has entered into a special security agreement with the Secretary of Defense.

*Documentation Citizen* means an entity able to document a vessel under 46 U.S.C. chapter 121. This definition includes a trust.

*DOD* means the U.S. Department of Defense.

*Domestic Trade* means trade between points in the United States.

*Eligible Vessel* means a vessel that meets the requirements of § 53102(b) of the MSA 2003.

*Emergency Preparedness Agreement* means an agreement, required by

§ 53107 of the MSA 2003, between a Contractor and the Secretary of Transportation (acting through MARAD) to make certain commercial transportation resources available during time of war or national emergency or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation.

*Enrollment* means the entry into an MSP Operating Agreement with MARAD to operate a vessel(s) in the MSP Fleet in accordance with § 296.30.

*Fiscal Year* means any annual period beginning on October 1 and ending on September 30.

*Foreign Commerce* means:

(1) For any vessel other than a liquid or a dry bulk carrier, a cargo freight service, including direct and relay service, operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement under section 12105 of title 46, United States Code, where the origination point or the destination point of any cargo carried is the United States, regardless of whether the vessel provides direct service between the United States and a foreign country, or commerce or trade between foreign countries; and

(2) For liquid and dry bulk cargo carrying services, includes trading between ports in the United States and foreign ports or trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit United States-documented vessels to freely compete with foreign-flag bulk carrying vessels in their operation or in competing for charters.

*LASH Vessel* means a lighter aboard ship vessel.

*Militarily Useful* is defined, in terms of minimum military capabilities, according to DOD Joint Strategic Planning Capabilities Plan (JSCAP) guidance.

*MSA 2003* means the Maritime Security Act of 2003.

*MSP Fleet* means the fleet of vessels established under section 53102(a) of the MSA 2003 and operated under MSP Operating Agreements.

*MSP Operating Agreement* means the assistance agreement between a Contractor and MARAD that provides for

## Maritime Administration, DOT

## § 296.2

MSP payments, but is not a “procurement contract.”

*MSP Payments* means the payments made for the operation of U.S.-flag vessels in the foreign commerce.

*Noncontiguous Domestic Trade* means transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

*Operating Day* means any calendar day during which a vessel is operated in accordance with the terms and conditions of the MSP Operating Agreement.

*Operator* is a person that either owns a vessel and operates that vessel directly or charters in a vessel at a financial risk through a demise charter that transfers virtually all the rights and obligations of the vessel owner to the vessel operator, such as that of crewing, supplying, maintaining, insuring and navigating the vessel.

*Owner* means an entity that has title and/or beneficial ownership of a vessel. Only an owner that is a person is eligible to enter into an MSP Operating Agreement.

*Participating Fleet Vessel* means any vessel that:

(1) On October 1, 2005—

(i) Meets the citizenship requirements of paragraph (1), (2), (3), or (4) of section 53102(c) of the MSA 2003;

(ii) Is less than 25 years of age, or is less than 30 years of age in the case of a LASH vessel; and

(2) On December 31, 2004, is covered by an MSP Operating Agreement.

*Person* includes corporations, limited liability companies, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country. For purposes of holding an MSP Operating Agreement, the term “person” excludes a trust.

*Roll-on/Roll-off Vessel* means a vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required.

*SecDef* means Secretary of Defense acting through the Commander USTRANSCOM.

*Section 2 Citizen* means a United States citizen within the meaning of section 2 of the Shipping Act, 1916, 46 U.S.C. 802, without regard to any statute that “deems” a vessel to be owned and operated by a Section 2 Citizen.

*Secretary* means the Secretary of Transportation acting through the Maritime Administrator.

*Tank Vessel* means, as stated in 46 U.S.C. 2101(38), a self-propelled tank vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. In addition, the vessel must be double hulled and capable of carrying simultaneously more than two separated grades of refined petroleum products.

*Transfer of an MSP Operating Agreement* includes any sale, assignment or transfer of the MSP Operating Agreement, either directly or indirectly, or through any sale, reorganization, merger, or consolidation of the MSP Contractor.

*United States* includes the 50 U.S. States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

*United States Citizen Trust* means:

(1) Subject to paragraph (3) of this definition, a trust that is qualified under this definition.

(2) A trust is qualified only if:

(i) Each of the trustees is a Section 2 Citizen; and

(ii) The application for documentation of the vessel under 46 U.S.C. chapter 121, includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a Section 2 Citizen, or involving any other person that is not a Section 2 Citizen, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(3) If any person that is not a Section 2 Citizen has authority to direct or participate in directing a trustee for a

### § 296.3

### 46 CFR Ch. II (10–1–13 Edition)

trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust instrument provides that persons who are not Section 2 Citizens may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(4) This definition shall not be considered to prohibit a person who is not a Section 2 Citizen from holding more than 25 percent of the beneficial interest in a trust.

*United States Documented Vessel* means a vessel documented under 46 U.S.C. chapter 121.

#### § 296.3 Applications.

(a) *Action by MARAD—Time Deadlines.* Applications for enrollment of vessels in the MSP were due by October 15, 2004 to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Any applications received before October 15, 2004 were deemed to have been submitted on October 15, 2004. Within 90 days after receipt of a completed application, the Secretary was obligated to approve the application, in conjunction with the SecDef, or provide in writing the reason for denial of that application. Execution of a standard MSP Operating Agreement took place reasonably soon after approval of the application. Contractors of MSP Operating Agreements were required to submit ownership information and signed charters to MARAD for approval by July 1, 2005.

(b) *Action by the Applicant.* Each applicant for an MSP Operating Agreement was required to submit an application under OMB control number 2133–0525 to the Secretary, Maritime Administration in the manner prescribed on that form. Application forms were made available from MARAD's Office of Sealift Support, or the application form could be downloaded from the MARAD Web site, <http://www.marad.dot.gov>, Information required included:

(1) An *Affidavit of Section 2 Citizenship* that comports with the requirements of 46 CFR part 355, if applying as a Section 2 Citizen. Otherwise, an affidavit which demonstrates that the applicant is qualified to document a vessel under 46 U.S.C. chapter 121 is required. If the applicant is a vessel operator and proposes to employ a vessel manager, then the applicant must supply an affidavit for the vessel manager that meets the same citizenship requirements applicable to the applicant;

(2) *Certificate of Incorporation*;

(3) *Copies of by-laws or other governing instruments*;

(4) *Maritime related affiliations*;

(5) *Financial data*:

(i) Provide an audited financial statement or a completed MARAD Form MA-172 dated within 120 days after the close of the most recent fiscal period; and

(ii) Provide estimated annual forecast of maritime operations for the next five years showing revenue and expense, including explanations of any significant increase or decrease of these items;

(6) *Intermodal network*:

(i) If applicable, a statement describing the applicant's operating and transportation assets, including vessels, container stocks, trucks, railcars, terminal facilities, and systems used to link such assets together;

(ii) The number of containers and their twenty-foot equivalent units (TEUs) by size and type owned and/or long-term leased by the applicant distinguishing those that are owned from those that are leased; and

(iii) The number of chassis by size and type owned and/or long-term leased by the applicant distinguishing those that are owned from those that are leased;

(7) *Diversity of trading patterns*: A list of countries and trade routes serviced along with the types and volumes of cargo carried;

(8) *Applicant's record of owning and/or operating vessels*: Provide number of ships owned and/or operated, specifying flag, in the last ten years, trades involved, number of employees in your ship operations department, vessel or ship managers utilized in the operation